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Doc. No. 307658 WEMHH/SB/21 (6/04)

Approved for use through 07/31/2006. OMB 0651-0031

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/763,719
	Filing Date	January 23, 2004
	First Named Inventor	Thomas Zdeblick
	Art Unit	3738
	Examiner Name	Alvin J. Stewart
Total Number of Pages in This Submission	Attorney Docket Number	4002-3456/PC261.21

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached (USPTO Credit Card Payment Form) <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawings <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) <input type="text"/>  Remarks <input type="text"/>	<input type="checkbox"/> After Allowance communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Receipt Postcard

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or individual name	Brad A. Schepers, Reg. No. 45,431 Woodard, Emhardt, Moriarty, McNett & Henry LLP
Signature	
Date	October 8, 2004

CERTIFICATE OF TRANSMISSION/MAILING	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below	
Typed or printed name	Brad A. Schepers
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Date	October 8, 2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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OCT 12 2004

Doc. No. 307655 WEMMH/SB/17 (10/04)

OMB 0651-0032

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# FEE TRANSMITTAL FOR FY 2004

Effective 01/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27Total Amount of Payment (\$)**704.00****Complete if Known**

Application Number **10763,719**  
 Filing Date **January 23, 2004**  
 First Named Inventor **Thomas Zdeblick**  
 Group Art Unit **3738**  
 Examiner Name **Alvin J. Stewart**  
 Attorney Docket Number **4002-3456/PC261.21**

**METHOD OF PAYMENT**
☐ Check ☒ Credit card ☐ Money Order ☐ Other ☐ None
☒ Deposit Account:Deposit  
Account  
Number

23-3030

Deposit  
Account  
NameWoodard, Emhardt, Moriarty,  
McNett & Henry LLP

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments  
☒ Charge any additional fee(s) during the pendency of this application,  
 excluding the payment of issue fees
**FEE CALCULATION****1. BASIC FILING FEE**

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
1001	790	2001	395	Utility Filing Fee	
1002	350	2002	175	Design Filing Fee	
1003	550	2003	275	Plant Filing Fee	
1004	790	2004	395	Reissue Filing Fee	
1005	160	2005	80	Provisional Filing Fee	
<b>SUBTOTAL (1)</b>					<b>(\$)<b>0.00</b></b>

**2. EXTRA CLAIM FEES**

Total Claims	Extra Claims	Fee From Below	Fee Paid
35	-49** = 0	X	0.00
Independent Claims	13	-5** = 8	X
Multiple Dependent			

(Four new claims to make a total of 23)

Large Entity Fee Code	Fee (\$)	Small Entity Fee Code	Fee (\$)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	88	2201	44	Independent claims in excess of 3
1203	300	2203	150	Multiple dependent claim, if not paid
1204	88	2204	44	**Reissue independent claims over original patent
1205	18	2205	9	**Reissue claims in excess of 20 and over original patent

**SUBTOTAL (2) (\$)**704.00****

\*\*or number previously paid, if greater; For Reissues, see above

**FEE CALCULATION (continued)****3. ADDITIONAL FEES**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner's Action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner's Action	
1251	110	2251	55	Extension for reply within first month	
1252	430	2252	215	Extension for reply within second month	
1253	980	2253	490	Extension for reply within third month	
1254	1,530	2254	765	Extension for reply within fourth month	
1255	2,080	2255	1,040	Extension for reply within fifth month	
1401	340	2401	170	Notice of Appeal	
1402	340	2402	170	Filing a brief in support of an appeal	
1403	300	2403	150	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,370	2453	685	Petition to revive - unintentional	
1501	1,370	2501	685	Utility issue fee (or reissue)	
1502	490	2502	245	Design issue fee	
1503	660	2503	330	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Petitions related to provisional applications	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other Fee (specify)

\* Reduced by Basic Filing Fee Paid

**SUBTOTAL (3) (\$)**0.00****

SUBMITTED BY:

Name (Print/Type): **Brad A. Schepers**Registration No.:  
(Attorney/Agent)**45,431**Telephone: **(317) 634-3456**

Signature:

Date: **October 8, 2004****CERTIFICATE OF MAILING OR TRANSMISSION**

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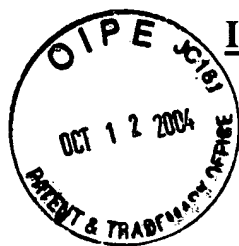
Name (Print/Type)

**Brad A. Schepers**

Signature

Date

**October 8, 2004**



# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:  
Thomas Zdeblick et al.

Application Serial No. 10/763,719

Filed January 23, 2004

METHODS AND INSTRUMENTS  
FOR INTERBODY FUSION

) Before the Examiner  
) Alvin J. Stewart  
)

) Group Art Unit 3738  
)

) Ref. No. PC261.21/  
) 4002-3456  
)

) October 8, 2004  
)

## RESPONSE TO FIRST OFFICE ACTION

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the first Office Action dated July 20, 2004, please enter and consider the following amendments and remarks. Additionally, please provide any extensions of time necessary and charge any additional fees which may be necessary to Deposit Account No. 23-3030, but not to include any payment of issue fees.

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October 8, 2004

Date of Deposit

Brad A. Schepers

Name of Registered Representative

Signature

October 8, 2004

Date of Signature

10/13/2004 HEUTEH1 00000047 10763719

704.00 0P

01 FC:1201

### **INTRODUCTORY COMMENTS**

Claims 14-28 and 38-71 were pending in the subject application for the first Office Action dated July 20, 2004. Claims 24-28 have been withdrawn from consideration as being directed to patentably distinct species of the claimed invention.

The Applicant has cancelled the withdrawn claims 24-28 from the subject application without prejudice for possible consideration in a continuing application. Claims 14, 38 and 56-62 have also been cancelled from the subject application without prejudice for possible consideration in a continuing application. In view of the following amendments and remarks, reconsideration and allowance of the subject application are hereby requested.